

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Public Safety and Homeland Security)	DA 13-273
Bureau Seeks Comment on Petition for)	
Declaratory Ruling and/or Rulemaking)	
Filed by Telecommunication Systems, Inc.)	
)	
Wireless E911 Location Accuracy)	GN Docket No. 11-117
Requirements)	
)	
In the Matters of IP-Enabled Services)	WC Docket No. 05-196
E911 Requirements for IP-Enabled Service)	
Providers...)	
)	
Facilitating the Deployment of)	PS Docket No. 11-153
Text-to-911 and Other Next Generation)	
911 Applications)	
)	
Framework for Next Generation 911)	PS Docket No. 10-255
Deployment)	

COMMENTS OF SPRINT NEXTEL CORPORATION

I. INTRODUCTION

Sprint Nextel Corporation (“Sprint Nextel”) hereby files these comments in support of Telecommunication Systems, Inc.’s (“TCS”) Petition for Declaratory Ruling and/or Rulemaking, filed on July 24, 2012.¹ Sprint Nextel supports TCS’ request that the Federal Communications Commission (“Commission”) clarify its rules and policies governing Enhanced 9-1-1 (“E911”) to account for the mandatory nature of 47 C.F.R §§ 9.5, 20.18. Sprint agrees that, because compliance with this mandate furthers and fulfills a government policy, it is “by and for” the government and triggers 28 U.S.C. §1498.

¹ Petition of Telecommunication Systems Inc. for Declaratory Ruling and/or Rulemaking, GN Docket No. 11-117, WC Docket No. 05-196, PS Docket No. 11-153, PS Docket No. 10-255 (filed July 24, 2012) (“TCS Petition”).

Accordingly, the Commission should provide guidance regarding the applicability of 28 U.S.C. § 1498 to E911 and to Next Generation 911 (“NG911”), since the Commission is currently considering the framework for NG911 services .

II. DISCUSSION

The Commission has a “... longstanding and continuing commitment to manage use of the electromagnetic spectrum in a manner that promotes the safety and welfare of all Americans.”² As part of this commitment, the Commission has taken important steps to ensure that the 911 system continues to meet the needs of public safety and American consumers as technology advances. Over time, the Commission has revised its 911 regulations to require wireless carriers to provide more detailed location information associated with wireless 911 calls (in the form of Enhanced 911 service), in order to equip public safety entities with the information they need to respond expeditiously to emergency calls. Because E911 service is of vital importance to the public, the Commission should take action on TCS’ Petition to ensure there are no obstacles to providing this critical service.

The wireless industry has invested significant time and resources in furthering multiple important public safety initiatives, including E911. E911 vendors, service providers, and carriers, however, have been exposed to a large volume of litigation as a result of their efforts to comply with the Commission’s E911 mandates. These recurring infringement lawsuits have the potential to cause disruption, delay, or the inability to

² *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 94-102, FCC 96-264 (1996), par. 1.

deliver E911 services, all as a result of compliance with government-mandated regulations.

As TCS outlines in its Petition, patent assertion entities (“PAEs”) are taking advantage of the mandatory nature of the Commission's E911 regulations by attempting to profit from the dilemma each 911 provider faces: whether to comply with 911 regulations at the risk of facing litigation or not comply and, as a result, be subject to Commission enforcement action.³ PAEs use this leverage first to file suit and then to extract settlements from E911 vendors, service providers, and carriers, who settle to avoid the untenable outcome that a court may issue an injunction and thereby inhibit activities necessary to provide E911 service. TCS’ Petition simply seeks to clarify that E911 is implemented for the benefit of the United States pursuant to federal regulations and that 28 U.S.C. §1498, which would require an action against the United States, applies.

The language of 28 U.S.C. § 1498 clearly applies to the Commission’s E911 regulations. As TCS discusses in its Petition, the courts have held that “[a] use is ‘for the Government’ if it is ‘in furtherance and fulfillment of a stated Government policy’ which serves the Government’s interests and which is ‘for the Government’s benefits.’”⁴ In addition, the courts have interpreted “for the government” to mean “that the use must take place in furtherance of government policy with some benefit accruing to the

³ TCS Petition, at Summary.

⁴ *Madley v. Duke University*, 413 F. Supp. 2d 601, 607 (2006).

government.”⁵ Such is clearly the case here, given that E911 regulations were enacted in furtherance of the federal government's 911 public safety policies. The mandated provision of E911 service directly benefits the United States government's public safety services, and all United States citizens. Accordingly, Sprint supports clarifying that 28 U.S.C. §1498 applies to the provision of E911 service, as requested by TCS.

911 solutions vendors such as TCS are critical to the future of Next Generation 911 (“NG911”) deployment and should have maximum flexibility to develop and deploy technologies that will meet the FCC’s regulatory requirements for E911 and NG911. Unfortunately, this flexibility is being threatened by a host of predatory patent infringement claims that are based on E911 service provider’s compliance with E911 regulations. Technology innovation will be stifled if E911 solutions vendors are forced to dedicate time and resources to litigating patent claims instead of developing the advanced technologies that are needed to meet the Commission’s 911 requirements.

As TCS has outlined in its Petition, it is already facing a large volume of patent claims based on existing technology and compliance efforts. Sprint agrees with TCS that this type of litigation is likely to increase dramatically as new technologies and capabilities – such as video, pictures, and e-mail – are integrated into the 911 system as part of NG911.⁶

⁵ *Advanced Software Design Corp. v. Federal Reserve Bank of St. Louis*, No. 4:07CV185 CDP, 2007 WL 3352365 at *5 (E.D. Mo 2007).

⁶ TCS Petition at pg. 13.

III. CONCLUSION

The Commission should examine the intellectual property issues raised by the TCS Petition and provide guidance regarding the applicability of 28 U.S.C. § 1498 to E911 and NG911.

Respectfully Submitted,

SPRINT NEXTEL CORPORATION

/s/ Allison M. Jones

Ray M. Rothermel
Allison M. Jones

900 7th Street, NW, Suite 700
Washington, DC 20001
703-433-4992

Its Attorneys

March 25, 2013